



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF :
本函檔號 OUR REF : LS/B/1/15-16
電話 TELEPHONE : 3919 3510

傳真 FAX : 2877 5029
電郵 E-MAIL : wwylo@legco.gov.hk

By Fax (2869 4195)

10 December 2015

Mr AU Ka-shing, Billy
Prin AS for Financial Services & the Treasury
(Financial Services)4
Financial Services and the Treasury Bureau
15/F, Queensway Government Offices
66 Queensway
Hong Kong

Dear Mr AU,

**Companies (Winding Up and Miscellaneous
Provisions) (Amendment) Bill 2015**

I am scrutinizing the legal and drafting aspects of the Bill and would like to seek clarification on the following points -

Clause 6(2) – section 2(1)

In the proposed amended definition of "liquidator", for the sake of clarity, please consider including section 194(1)(da).

The Chinese rendition of the new definition of "transaction at an undervalue" is 遜值交易 and of "unfair preference" is 不公平優惠. However, it is noted that the Chinese rendition of the two phrases mentioned above in the Bankruptcy Ordinance (Cap. 6) are "以低於一般價值而訂立的交易" and "不公平的優惠" respectively. Please explain the difference. Further, please clarify whether the Chinese rendition of the two phrases in the Bill will be used in similar drafting in the future and whether Cap. 6 will be amended accordingly.

Clause 15(7) – section 168IA(7)

Under section 168IA(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Official Receiver may apply to

the court for a public examination by a report stating that in his opinion a prima facie case exists against any person that would render the person liable to a disqualification order under Part IVA of Cap. 32. In the proposed amendments to section 168IA(7), the existing right of the person ordered to be publicly examined by the court to be furnished with a copy of the Official Receiver's report is removed.

Please explain the reason for removing this right. Please also clarify how the right of the person ordered to be publicly examined to know the case against him may be protected.

Clause 20 – section 170A

While "members" and "shareholders" may be used interchangeably as recognized in section 2(10) of Cap. 32, shareholders are referred to as "members" throughout Cap. 32 and "member" is defined in section 2(1) of Cap. 32 and "shareholder" is not. It is noted that "shareholder" is used in new section 170A, which is the only provision in the Bill where "shareholder" is used. Please consider amending "shareholder" to "member" in section 170A for the sake of consistency.

Further, new section 170A(5) provides that "Section 170 does not apply in relation to liability accruing under this section". The meaning and purpose of this provision is not clear. If it is intended to make section 170 not applicable to section 170A, please consider simplifying the drafting of section 170A(5) by deleting the words "in relation to liability accruing under this section". If, however, it is intended to make only certain part(s) of section 170 not applicable to section 170A, please amend section 170A(5) by specifying what part(s) of section 170 is not applicable.

Clause 30(6) – section 190(2B)

New section 190(2B) provides that an affidavit of concurrence made under subsection (2A) may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the affidavit is not in agreement with the maker of the statement, considers the statement to be erroneous or misleading or is without the direct knowledge necessary for concurring in the statement.

If the "affidavit of concurrence" may be qualified as such, what is the purpose of new section 190(2A) allowing provisional liquidators or liquidators to require the submission of the affidavit "stating that the person concurs in the statement [of affairs]"? Is it still appropriate to call the affidavit "affidavit of concurrence"?

Clause 33(3) – section 193(7)

New sections 193(6) and 193(7) provide for termination and resignation of a provisional liquidator respectively. However, no provision is made for circumstances where a vacancy occurs in the office of provisional liquidator. Please explain and consider including a provision providing for circumstances where such vacancy occurs.

Clause 34 – section 194

Section 194(2) provides that the Official Receiver, being the liquidator of a company, may apply to the court at any time for the appointment of a person as a liquidator in his place. Under section 194(1)(aa), a person other than the Official Receiver may also act as the liquidator. However, no provision similar to section 194(2) is made for such person, being the liquidator of a company, to apply the court for the appointment of a person as a liquidator in his place. Should all liquidators (and not only those who are Official Receivers) have the same right to apply the court for the appointment of persons as liquidators in their place? Please explain why a person acting as a liquidator under section 194(1)(aa) does not enjoy the same right as the Official Receiver acting as a liquidator?

Clause 37 – section 199B

It appears that new sections 199(6), 199A(3) and 199B(7) contain the same provisions. However, the words "for direction" is missing in section 199B(7) after "...apply to the court". Please amend.

As scrutiny of the Bill is continuing, further letter may be issued to seek clarification on further points, if necessary.

I would appreciate if you could let me have the said information (in both Chinese and English with soft copy to Miss Kathy NG at pcng@legco.gov.hk) at your earliest convenience.

Yours sincerely,



(Winnie LO)

Assistant Legal Adviser

c.c. LA
SALA3